

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, :
: :
V. : CRIMINAL ACTION
: FILE NO. 1:05-CR-543
PHI HUYNH :
: :
DEFENDANT. : :

MOTION TO DISMISS

COMES NOW, Phi Huynh, a citizen presumed innocent, named as the Defendant in the above-referenced action, by and through the undersigned counsel and files this Motion to Dismiss pursuant to Federal Rule of Criminal Procedure 7(c) (1), 7 (c) (2), 12 (b) and the Sixth Amendment to the United States Constitution to wit:

1.

Ms. Huynh is charged along with twenty six (26) defendants in a thirteen (13) count indictment. Ms. Huynh is charged in Count One, a conspiracy count.

2.

No other count names Ms. Huynh. Specifically, Ms. Huynh is not alleged to have committed any overt act.

3.

An indictment must contain every element of an offense to pass constitutional muster. *United States v. Fern*, 155 F. 3d 1318 (11th Cir. 1998). An overt act is an element of the conspiracy alleged in the indictment. *United States v. Hansen*, 262 F 3d 1217 (11th Cir. 2001).

4.

Federal Rule of Criminal Procedure 7 (c) 1 provides that an indictment shall be a plain, concise and definite written statement of essential facts constituting the offense charged. *United States v. Gold*, 743 F 2d 800)11th Cir. 1984).

5.

Further, the Sixth Amendment to the United States Constitution guarantees every defendant the right to be informed of the government's accusations against him. *United States v. Chilcote*, 724 F. 2d 1498 (11th Cir. 1984).

6.

With respect to the forfeiture Count, there is no allegation of specific property or the extent of an interest in such property. No judgment of forfeiture can be had unless there is such an allegation. *United States v. Diaz*, 190 F. 3d 1247 (11th Cir. 1999).

WHEREFORE, Defendant prays that this indictment against her be dismissed.

Submitted this 11th day of January, 2007.

/S/
Cynthia W. Roseberry

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Motion upon the each party by electronic transfer, in accordance with the rules of this Court:

This 11th day of January 2007.

/S/
Cynthia W. Roseberry

